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NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER, 1994 TERM

**WILLIE MASON AND CASSANDRA JACKSON,
PETITIONERS,**

VS.

**THE UNITED STATES OF AMERICA,
RESPONDENT.**

Petitioners', Willie Mason and Cassandra Jackson's:

PETITION FOR A WRIT OF CERTIORARI

**To The United States Court of Appeals
For the Seventh Circuit**

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61 pp

THE QUESTIONS PRESENTED FOR REVIEW ARE:

1. **Is not this Court's recent, January 11, 1994 holding in RATZLAF V. UNITED STATES, 114 S.Ct. 655, 126 L.Ed. 2nd 615, that under 31 USC 5322 and 5324,**

> **"TO ESTABLISH THAT A DEFENDANT 'WILLFULLY VIOLAT [ED]' THE ANTISTRUCTURING LAW, THE GOVERNMENT MUST PROVE THAT THE DEFENDANT ACTED WITH KNOWLEDGE THAT HIS CONDUCT WAS UNLAWFUL.",**

(decided while the instant cause was awaiting a decision by the Court of Appeals for the Seventh Circuit), **ALSO APPLICABLE TO PETITIONERS' ANTISTRUCTURING CONSPIRACY TO DEFRAUD THE UNITED STATES UNDER 18 USC 371?**

2. **DO NOT PETITIONERS' CONVICTIONS FOR THEIR COMMISSION OF ACTS BEFORE THE JANUARY 27, 1987 EFFECTIVE DATE OF THE ANTISTRUCTURING STATUTE, 31 USC 5324, VIOLATE THE EX POST FACTO PROHIBITION OF ARTICLE 1, SECTION 9, PARAGRAPH 3 OF THE UNITED STATES CONSTITUTION?**

3. **Is not the September 6, 1994 decision of the United States Court of Appeals for the Seventh Circuit, in the case at bar, that A CONSPIRACY TO DEFRAUD THE UNITED STATES UNDER 18 USC 371 DOES NOT REQUIRE PROOF THAT THE DEFENDANT INTENDED TO DEFRAUD THE GOVERNMENT, IN CONFLICT WITH AN OPPOSITE DECISION OF JULY 22, 1994 OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT IN UNITED STATES VS. LICCIARDI, 30 F. 3d. 1127, AND THE DECISION OF THIS COURT IN TANNER VS. U.S., 489 US 107 (1987) ON THE SAME MATTER AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION?**

C.

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D.

OFFICIAL REPORT OF OPINION

The opinion of the Court of Appeals for the Seventh Circuit sought to be reviewed is reported, U.S.A. vs. MASON and JACKSON, 33 Fed. 3d 866 (1994) and is set forth in the Appendix, Opinion pages 1-20. No other opinion by any other court has been delivered or reported in this case.

E.

JURISDICTIONAL STATEMENT

I. The date of the entry of the judgment of the Court of Appeals affirming Petitioners' convictions, which is sought to be reviewed, is September 6, 1994.

II. Petitioners' [Defendants-Appellants'] Petition for Rehearing was denied on November 1, 1994.

IV. Title 28 USC, Sec. 1254(1), Rule 10(1)(3) of the Rules of the United States Supreme Court, and Article 3 of the Constitution of the United States confer on this Court jurisdiction to review the judgment in question by Writ of Certiorari.

F.

THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article 1, Section 9, Paragraph 3 of the Constitution of the United States,

> "No...ex post facto law shall be passed."

31 USC 5322:

> (a) a person **WILLFULLY** violating this subchapter or a regulation prescribed under this subchapter...shall be fined not more than $250,000, or imprisonment not more than five years, or both. (emphasis ours)

31 USC 5324:

> No person shall for the purpose of evading the reporting requirements of Section 5313(a) with respect to such transaction --
>
> (1) cause or attempt to cause a domestic financial institution to fail to file a report required under Section 5313(a);
>
> (2) cause or attempt to cause a domestic financial institution to file a report required under Section 5313(a) that contains a material omission or misstatement or fact, or
>
> (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

EDITORIAL NOTES

Effective Date. Section 1364(a) of Pub.L. 99-570 provided that: "The amendment made by Section 1354 [enacting this section] shall apply with respect to transactions for the payment, receipt or transfer of United States coins or currency or other monetary instruments completed after the end of the 3-month period beginning on the date of the enactment of this Act [Oct. 27, 1986]."

STATEMENT OF THE CASE

The indictment in the case at bar, set forth hoc verba, Appendix, Indictment pages 22-34, contained four counts, in each of which Petitioners', WILLIE MASON and CASSANDRA JACKSON, only, were charged as defendants. Count 1 charged Petitioners with an antistructuring conspiracy to defraud the United States in violation of 18 USC 371. Count 1 alleged that Petitioners,

> **"FROM ON OR ABOUT APRIL, 1986, and continuing at least until on or about July, 1988",**

conspired to defraud the United States by impeding and defeating the lawful functions of the Department of the Treasury in collecting information relating to Petitioners' (1) access to large amounts of cash, (2) cash transactions in excess of $10,000, and (3) expenditures of large amounts of cash; that Title 31 USC Section 5313(a) and 31 CFR 103.22(a) (1) required financial institutions to file with the Internal Revenue Service a Currency

Transaction Report, IRS Form #4789, for each of its customer's financial transactions of more than $10,000 in currency; that IRS Form, #4789 required the financial institution to identify and record the name and address of the person-customer who conducted a currency transaction in excess of $10,000, and the name and address of the beneficiary of such transaction, and that multiple currency transactions of less than $10,000 each, within a twenty-four hour period by or on behalf of any person which totaled more than $10,000, were to be treated as a single transaction of an amount in excess of $10,000 and were required to be reported on the IRS Form #4789.

Count 1 also alleged that as a part of the conspiracy, (1) in order to avoid the filling of IRS Form #4789 of their cash transactions which exceeded $10,000, Petitioners structured bank deposits, real estate and vehicle purchases totaling more than $10,000, by multiple single cash payments of less than $10,000 each, (2) to conceal their activities and to avoid truthful information on IRS Form #4789 of their multiple single cash transactions exceeding $10,000, Petitioners provided false information to financial institutions and businesses, and (3) to disguise the true ownership of certain assets and their association with cash transactions, Petitioners caused bank accounts, vehicles and real estate to be placed in the names of persons other than the true owners.

Count 1 additionally alleged that on **APRIL 22, 1986,** Petitioners purchased a building at 5247 West North Avenue, Chicago, Illinois, for the total amount of $22,274, with seven cashier's checks totaling $18,000, but none of which was for $10,000 or more.

Further, count 1 alleged that in October, 1987 Petitioners agreed to purchase for $102,000, a residence at 342 Forest, Hillside, Illinois, and that on October 3, 1987. Petitioner, MASON, tendered to the seller's real estate agent/broker a down payment of $10,200 in the form of two cashier's checks in amounts of $5,000 and $5,200. Count 1 also alleged that in November, 1987, Petitioners also tendered an additional 14 cashier's checks and one money order, totaling $90,671, as the full payment on their purchase of the 342 Forest, Hillside, Illinois property, and that none of the 14 cashier's checks or the money order had a value of $10,000 or more. Additionally, count 1 charged that in **JULY, 1986** Petitioners purchased a Corvette automobile, and in March, 1988 traded the Corvette for a BMW automobile.

Finally, count 1 charged that in July, 1988 Petitioner, MASON, purchased a Jaguar automobile for $27,000, which was paid for in part with cashier's checks in amounts under $10,000, all in violation of 18 USC 371.

Counts 2, 3 and 4 charged Petitioners with substantive antistructuring acts, under 31 USC 5324(3) and 5322(a), for their financial transactions after **JANUARY 27, 1987**, which antistructuring acts-financial transactions were also alleged, along with their other pre-January 27, 1987 financial transactions, as overt acts in the count 1 antistructuring conspiracy to defraud the United States, under 18 USC 371.

The government's evidence established that Petitioners committed the financial structuring acts attributed to them in the indictment. The government presented no evidence, however, that either Petitioner, MASON or JACKSON, knew or acted with knowledge that their financial structuring was unlawful, or that they willfully violated the antistructuring statutes.

Count 4 of the indictment was dismissed as to Petitioner, JACKSON. The jury found her guilty on counts 1, 2 and 3, and she was sentenced to twenty-five (25) months imprisonment. Petitioner, MASON, was found guilty by the jury on all 4 counts and he was sentenced to thirty-seven (37) months imprisonment.

The Court of Appeals reversed Petitioners' convictions under 2, 3 and 4, the substantive antistructuring counts, but affirmed Petitioners' convictions under count 1, the antistructuring conspiracy to defraud the United States under 18 USC 371.

ARGUMENT FOR ALLOWANCE OF THE WRIT

I

THIS COURT'S RECENT JANUARY 11, 1994 HOLDING IN RATZLAF, THAT TO ESTABLISH THAT A DEFENDANT WILLFULLY VIOLATED THE ANTISTRUCTURING STATUTE, 31 USC 5324, THE GOVERNMENT MUST PROVE THAT THE DEFENDANT ACTED WITH KNOWLEDGE THAT HIS CONDUCT WAS UNLAWFUL, IS APPLICABLE TO AN ANTISTRUCTURING CONSPIRACY TO DEFRAUD THE UNITED STATES, UNDER 18 USC 371.

This Honorable Court's recent January 11, 1994 holding in **RATZLAF VS. UNITED STATES**, 114 S.Ct. 655, 126 L.Ed. 2nd 615, is clearly binding on and applicable to an antistructuring conspiracy to defraud the United States under 18 USC 371. This contrary decision of the United States Court of Appeals in the case at bar so far departs from the accepted and usual course of judicial proceedings and is such a refusal to apply this Court's decision to the instant case as to call for an exercise of this Court's power of supervision

While Petitioners' convictions were pending on review and awaiting a decision in the Court of Appeals for the Seventh Circuit, this Honorable Court, in reversing the Petitioners-Defendants' antistructuring convictions, under 31 USC 5322 and 5324, held in **RATZLAF VS. UNITED STATES**, 114 S.Ct. 655, 126 L.Ed. 2nd 615, that:

> "Federal law requires banks and other financial institutions to file reports with the Secretary of the Treasury whenever they are involved in a cash transaction that exceeds $10,000. 31 U.S.C. Section 5313; 31 CFR Section 103.22(a) (1993). It is illegal to

"structure" transactions - i.e., to break up a single transaction above the reporting threshold into two or more separate transactions - for the purpose of evading a financial institution's reporting requirement. 31 U.S.C. Section 5324. This case presents a question on which Courts of Appeals have divided: **DOES A DEFENDANT'S PURPOSE TO CIRCUMVENT A BANK'S REPORTING OBLIGATION SUFFICE TO SUSTAIN A CONVICTION FOR 'WILLFULLY VIOLATING' THE ANTISTRUCTURING PROVISIONS? [FN1] WE HOLD THAT THE 'WILLFULNESS' REQUIREMENT MANDATES SOMETHING MORE. TO ESTABLISH THAT A DEFENDANT 'WILLFULLY VIOLAT [ED]' THE ANTISTRUCTURING LAW, THE GOVERNMENT MUST PROVE THAT THE DEFENDANT ACTED WITH KNOWLEDGE THAT HIS CONDUCT WAS UNLAWFUL".** (emphasis ours)

Based on **RATZLAF**, the Court of Appeals reversed Petitioners' convictions on Counts 2, 3 and 4. The Court of Appeals refused, however, to follow **RATZLAF** on Count 1 on the fallacious distinction that Count 1 charged a conspiracy under 18 USC 371, to defraud the United States, even though the conspiracy alleged (and proven) was an antistructuring conspiracy to defraud the United States and, even though all the overt acts alleged and proven to have been committed by Petitioners', as a part of, pursuant to and in furtherance of the conspiracy were all antistructuring acts. **RATZLAF** requires reversal of Petitioners' antistructuring conspiracy convictions.

The government and the United States Court of Appeals concede that there was no evidence that Petitioners acted willfully or that Petitioners had knowledge that their financial structuring was unlawful. The Court of Appeals therefore, under **RATZLAF**, reversed Petitioners' convictions under the substantive antistructuring Count 2, 3 and 4 offenses. The Court of Appeals, however, erroneously refused to apply **RATZLAF** to the Count 1

conspiracy simply because Count 1 alleged a violation of 18 USC 371, in spite of the fact that all the overt acts alleged and committed as a part of, in furtherance of and pursuant to the conspiracy were antistructuring acts. This dubious and purely cosmetic distinction by the Court of Appeals is gossamer and grossly ill-founded. If it is allowed to stand, ingenious prosecutors could and would avoid and circumvent (1) this Honorable Court's holding in **RATZLAF**, and (2) the statute's requirement that the government prove that a defendants' antistructuring was knowingly and willful, by simply indicting and prosecuting a defendant for antistructuring in a conspiracy under 18 USC 371, rather than for the substantive antistructuring offenses under 31 USC 5322(a) and 5324, an intolerable oxymoronic option. The Petition for a Writ of Certiorari, it is respectfully submitted, should therefore be granted and Petitioners' convictions of the antistructuring conspiracy to defraud the United States, under 18 USC 371, under authority of **RATZLAF**, should be reversed.

II

"PETITIONERS' CONVICTIONS FOR ACTS COMMITTED BEFORE THE JANUARY 27, 1987 EFFECTIVE DATE OF THE ANTISTRUCTURING STATUTE VIOLATE THE EX POST FACTO PROHIBITION OF ARTICLE 1, SECTION 9, PARAGRAPH 3 OF THE UNITED STATES CONSTITUTION; PETITIONERS' CONVICTIONS THEREFORE CANNOT STAND AND MUST BE REVERSED."

In the case at bar, an ingenious prosecutor sought to avoid the constitutional prohibition against ex post facto law with the prosecutors' infamous darling, **A CONSPIRACY**. The conspiracy was alleged to have been committed and overt acts

pursuant to the conspiracy were alleged to have been committed, both before and after the effective date of the antistructuring prohibitions of 31 USC 5324. Thus, Petitioners were convicted and sentenced to imprisonment for commission of acts by them in 1986, in violation of 31 USC 5324, before the January 27, 1987 effective date of said statute. Petitioners' convictions therefore violate the ex post facto prohibition of Article 1, Section 9, Paragraph 3 of the United States Constitution and cannot stand and must be reversed. The contrary decision of the Court of Appeals in the case at bar so far departs from the accepted and usual course of judicial proceedings and interpretation of a provision of the Constitution of the United States as to call for an exercise of this Court's power of supervision.

Article 1, Section 9, Paragraph 3 of the Constitution of the United States provides, in pertinent part:

"NO...EX POST FACTO LAW SHALL BE PASSED."

Count 1 of the indictment charged that 31 USC Section 5313 required financial institutions to file with the Internal Revenue Service a currency transaction report for each financial transaction exceeding $10,000 in currency, and that Petitioners conspired to evade the filing of such reports by structuring bank deposits, real estate and automobile purchases exceeding $10,000 by multiple cash payments of less than $10,000 each. The evasion of the reporting requirements of Section 5313(a) by persons, other than the financial institutions in the transaction, was not prohibited until January 27, 1987, by the enactment of Section 5324. Section 5324 prohibits a person, for the purpose of evading the reporting requirement of Section 5313(a), (1) causing or attempting to cause a financial institution to fail to file the

required Section 5313(a) report, (2) causing or attempting to case a Section 5313(a) report to be filed that contains material factual misstatements or omissions, or (3) structuring any transaction with one or more financial institutions. Following said Section 5324 of Title 31, there is stated:

> "Added Pub.L. 99-570, Title I, Section 1354(a), Oct. 27, 1986, 100 Stat. 3207-22.)

EDITORIAL NOTES

> **EFFECTIVE DATE. SECTION 1365(A) OF PUB.L. 99-570 PROVIDED THAT: 'THE AMENDMENT MADE BY SECTION 1354 [ENACTING THIS SECTION] SHALL APPLY WITH RESPECT TO TRANSACTIONS FOR THE PAYMENT, RECEIPT OR TRANSFER OF UNITED STATES COINS OR CURRENCY OR OTHER MONETARY INSTRUMENTS COMPLETED AFTER THE END OF THE 3-MONTH PERIOD BEGINNING ON THE DATE OF THE ENACTMENT OF THIS ACT [OCT. 27, 1986]."**

The conspiracy count 1 extensive allegations comprised 13 overt acts and 14 conspiratorial parts and purposes. Six (6) of the 13 alleged overt acts and 4 of the 14 conspiratorial parts and purposes were alleged and were proven to have been committed, before the January 27, 1987 effective date of Section 5324; i.e., 4 of the 14 alleged parts and purposes of the count 1 conspiracy were alleged to have been committed by Petitioners,

> **"FROM ON OR ABOUT APRIL, 1986, JUNE 3, 1986 AND JULY, 1986";**

and the dates of the commission of the alleged count 1 conspiracy, were,

> **"FROM ON OR ABOUT APRIL, 1986 AND CONTINUING TO AT LEAST UNTIL ON OR ABOUT JULY, 1988";**

and the dates on which six of the conspiratorial overt acts, (A, B, C, D, E and F) were alleged to have been committed, were,

"APRIL 22, JUNE 3 AND JULY, 1986".

Prior to trial, Petitioners filed a motion for dismissal of the count 1 conspiracy. They urged for dismissal that the conspiracy count alleged that the conspiracy was alleged to have been committed **"from on or about April, 1986 and continuing at least on or about July, 1988"**. The Petitioners' dismissal motion urged that in April, 1986 and until January 27, 1987, there was no Section 5324 prohibition against Petitioners' structuring financial transactions to evade the reporting requirements of Section 5313(a), and that the pre-January 27, 1987 allegations of count 1 were prohibited by the ex post facto prohibition of the United States Constitution. The government's and the Court of Appeals' attempts to retroactively impute a proscribed act to Petitioners are repugnant to and violate Petitioners' constitutionally guaranteed protection against ex post facto criminal legislation. Dobbert v. Florida, 432 U.S. 282 (1977).

Even if it is assumed that in April, 1986 Petitioners agreed and intended to evade the reporting requirements of 31 USC Section 5311, et seq., at that time, the alleged agreement and intent were not unlawful. Such an agreement and intent did not become unlawful until January 27, 1987. Prior to the effective date of 31 USC Section 5324, January 27, 1987, 31 USC Section 5311 et. seq., imposed no legal duty on Petitioners, either not to structure transactions or to disclose currency transactions over $10,000. To retroactively criminalize an agreement or an intent is constitutionally impermissible.

Assuming arguendo that Petitioners entered into an agreement to structure financial transactions for the purpose of

evading the reporting requirements imposed upon financial institutions by 31 USC Section 5313, such structuring was not unlawful in April, 1986 when the alleged agreement was made. The agreement to avoid the reporting requirements of any financial institution therefore could not possibly have been unlawful, as alleged in Count 1 of the indictment. 31 USC Section 5324, which made such acts unlawful, was not enacted until October 27, 1986, six months **AFTER** the alleged agreement, and it did not become effective until January 27, 1987.

When a person conducts cash transactions in amounts less than $10,000 because he or she has a legitimate reason to do so, no conspiracy to structure occurs. When typical innocent behavior is criminalized, there is a strong argument for requiring a person to have knowledge of the illegality of his actions to justify conviction. See, Lambert v. California, 355 U.S. 225, 228-229; Cheek v. United States, 498 U.S. 192 (1991).

In the instant case, Petitioners had conducted their affairs in a structured manner long before the enactment of 31 USC 5324. The government now seeks to retroactively impute the proscribed criminal motive back to April, 1986, prior to the enactment of the prohibition against such acts. The government failed to prove that Petitioners acted with the intent to evade the reporting requirement or that such an intent, even if proved, was unlawful in April, 1986, or that Petitioners were aware of a financial institution's reporting requirement.

Count 1 of the indictment, the conspiracy, charged that Petitioner, MASON, purchased real estate at 5247 West North Avenue, Chicago, Illinois, in April, 1986. Count 1 further alleged that in April, 1986, Petitioner, MASON, purchased a 1986

Corvette. Neither (1) the April, 1986 purchase of the property at 5247 West North Avenue, Chicago, Illinois, (2) the purchase in April, 1986 of the Corvette, nor (3) any other automobile purchased by Petitioner, MASON, was charged as a substantive antistructuring offense. The government quite correctly recognized that it could not constitutionally charge Petitioners with structuring financial transactions in April, 1986 and therefore did not bring substantive charges against them for those antistructuring transactions that occurred prior to January 27, 1987. Nonetheless, quite insidiously, but illegally, the government charged as a conspiracy those very transactions for which no substantive charges could be brought, and on which Petitioners' were convicted, in an attempted surreptitious circumvention of the ex post facto constitutional prohibition.

It is indeed noteworthy that while counts 2, 3 and 4 of the indictment alleged that the substantive offenses of antistructuring financial transactions, in violation of 31 USC 5324(3) and 5322(a), were committed on October 3, 29, November 2, 3 and 6, 1987. These same transactions are also alleged as overt acts "g" through "l", of Paragraph 16 of the conspiracy count 1. Conversely, however, and quite significantly, the indictment contains no substantive count alleging a violation of said structuring prohibitions based on the April 22, June 3 or July, 1986 financial structuring transactions alleged as overt acts in subparagraphs "a" through "f", of Paragraph 16 of the count 1 conspiracy. Nonetheless, the government charged as a conspiracy those very transactions for which no substantive charges could be constitutionally brought. Because of the constitutional prohibition against ex post facto laws, this was constitutionally pernicious.

During the instruction conference, Petitioners submitted Defendants' Instruction No. 10, which would have informed the jury that 31 USC 5324 was not in effect until January 27, 1987. The government opposed this instruction on the ridiculous ground that to so inform the jury would confuse them. The trial court erroneously refused Petitioners' proposed Instruction No. 10. The trial court did not advise the jury that 31 USC 5324 was not in effect until January 27, 1987.

It is clear that the trial court erred when it denied Petitioners' motion to dismiss count 1 of the indictment. Petitioners' convictions thereunder flagrantly violate the constitutional prohibition against ex post facto law. The Court of Appeals simplisticly and erroneously brushed aside this egregious ex post facto constitutional violation with the utterly illogical and fallacious reasoning that:

> **"[W]HETHER THERE WAS STRUCTURING ACTIVITY ALLEGED IN THE INDICTMENT AND PROVED AT TRIAL TOOK PLACE BEFORE THE ENACTMENT OF THE ANTISTRUCTURING OF THE ANTISTRUCTURING LAWS IS IRRELEVANT FOR EX POST FACTO PURPOSES.",**

and

> **"[T]HE INDICTMENT DATE OF THE ANTISTRUCTURING LAWS IS NOT RELEVANT FOR PURPOSES BY EX POST FACTO ANALYSIS IN THE DEFENDANTS' CASE. RATHER, THE ONLY RELEVANT DATE OF ENACTMENT IS THAT OF SECTION 371, AND THE OVERT ACTS THE GOVERNMENT PROVED AT TRIAL EVIDENCING THE CONSPIRACY OCCURRED LONG AFTER THAT DATE."**

What this foregoing fallacious rationale completely ignores is that prior to the enactment of the antistructuring statute, 31 USC 5324, on October 27, 1986, effective January 27, 1987, it most certainly was not a criminal offense, but indeed, it was

lawful for Petitioners to engage in antistructuring activity for whatever purpose, certainly to impede, impair, obstruct or to defeat "the lawful functions of the Department of the Treasury...", as charged in count 1 of the indictment. Taxpayers, their accountants and tax attorneys daily engage in such lawful impediments, impairments and obstructions to defeat the lawful functions of the Department of the Treasury. Such antistructuring financial activity, absent the requisite willful intent, still is not unlawful. The Petition for Writ of Certiorari, we respectfully urge, shall therefore be granted.

III

THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT IN THE CASE AT BAR, THAT A CONSPIRACY UNDER 18 USC 371 TO DEFRAUD THE UNITED STATES DOES NOT REQUIRE PROOF THAT THE DEFENDANT INTENDED TO DEFRAUD THE GOVERNMENT, IS IN CONFLICT WITH THE OPPOSITE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, IN UNITED STATES VS. LICCIARDI, 30 F. 3D. 1127, (7/22/94), ON THE SAME MATTER, AND THIS COURT'S DECISION IN TANNER VS. UNITED STATES, 489 US 107 (9/87) AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

This Court's most recent decision interpreting the **"DEFRAUD CLAUSE"** of the conspiracy statute, 18 USC 371, emphasizing that a significant element of proof of the subject conspiracy is defined by the **"TARGET OF THE CONSPIRACY"**, is Tanner vs. United States, 489 U.S. 107. In TANNER, two businessmen committed fraud while participating in an electrical

cooperative which was operated in conjunction with a co-op project by the Rural Electrification Administration (REA). The two men were prosecuted under the theory that the electrical cooperative had impaired the running of the REA, and that they had committed fraud upon the United States. This Court held, in TANNER, that the defendants were improperly charged under the conspiracy language of Section 371 since TANNER had not directly defrauded the United States government.

Following this Court's decision of TANNER, the Ninth Circuit expressed strong dissatisfaction with the over-expansion of the general federal conspiracy statute, 18 USC 371, to prosecute individuals who interfere with or test the limits of a federal regulatory scheme, and held in U.S. vs. Licciardi, 30 F. 3d. 1127, that a conspiracy to defraud the United States under 18 USC 371 requires proof that the defendant intended to defraud the government, and that a conspiracy which has the incidental effect of impairing a government agency, but is minimally related to the government, is not sufficient proof of mens rea.

In LICCIARDI, two grape brokers misrepresented the kinds of grapes they were selling to wineries in order to take advantage of sky-rocketing prices for Zinfindel grapes. Various growers were alleged to have assisted the brokers by enabling them to forge identification documents which were submitted to and regulated by the Bureau of Alcohol, Tobacco and Firearms (BATF). The field tags accompanying the impersonating grapes were sent out with grape shipments to wineries, which then used the tag information to file required BATF reports. Careful to avoid grape inspectors, Licciardi set up a shell company to run the operation. Licciardi was prosecuted for a conspiracy under 18 USC 371. The alleged object and purpose of the conspiracy was to defraud the United

States and the BATF by "obstructing, impairing and defeating the lawful function of BATF to insure the integrity and varietal designations of wine through examination and analysis of records maintained honestly and accurately and free from deceit, trickery, fraud and dishonesty". Licciardi was convicted. On appeal he contended, inter alia, that the conspiracy to defraud the United States statue, 18 USC 371, had been too broadly defined by the trial court and that he lacked the mens rea for commission of the underlying offense. He further argued that the conspiracy statute had long been abused by prosecutors to criminally prosecute individuals when evidence of the commission of the statutory offense was lacking; that as far back as Harrison vs. U.S., 7 F.2d 259, 263, (2nd. Cir. 1925), Judge Learned Hand castigated conspiracy laws as the **"DARLING OF THE MODERN PROSECUTOR'S NURSERY"**, and that federal prosecutors, in seeking to make a case under federal law, where no case otherwise existed, frequently attempted to unjustifiably expand the federal conspiracy statute.

In LICCIARDI, the defendant urged that the elements of the conspiracy to defraud the United States were simply missing. Just as This Court held in TANNER in 1987, and earlier in Hammerschmidt vs. U.S., 265 US 182, (1923), the Ninth Circuit in LICCIARDI "rebuffed the prosecutor's imaginative and unjustified expansion of the [conspiracy] statute.", cited its recent decision in U.S. vs. Caldwell, 989 F. 2d. 1056 (9th Cir. 1993), and held that a conspiracy to defraud the United States under 18 USC 371 required proof that the defendant intended to defraud the government, and that a conspiracy which has only the incidental effect of impairing a federal agency is not sufficient proof of mens rea.

The TANNER court stated and held:

"This case involves an effort of the government to extend substantially the scope of the general conspiracy statute.

• • •

It is true that the general conspiracy statute has been given a very broad meaning so that 'defraud' extends beyond its common law usage and includes interference or obstruction of a lawful governmental function 'by deceit, craft or treachery or at least by means that are dishonest'. *Hammerschmidt v. United States*, 265 U.S. 182, 188, 44 S.Ct. 511, 512, 68 L.Ed. 968, (1923). If all the government had to prove was that Licciardi had used dishonest means and that these means had the effect of impairing a function of the BATF, the government would easily have prevailed.

• • •

The difficulty for the government is Licciardi's *mens rea* for commission of the federal crime. *Mens rea* is, of course, a fundamental requirement of our criminal jurisprudence.

• • •

IN THE CASE OF A CHARGE OF CONSPIRACY TO VIOLATE THE FEDERAL STATUTE THE GOVERNMENT 'MUST PROVE AT LEAST THE DEGREE OF CRIMINAL INTENT NECESSARY FOR THE SUBSTANTIVE OFFENSE ITSELF'.

• • •

THIS REQUIREMENT HAS BEEN THE RULE FOR AT LEAST A CENTURY. *PETTIBONE V. UNITED STATES*, 148 U.S. 197, 207, 13 S.CT. 542, 547, 37 L.ED. 419 (1893) ('THE SPECIFIC INTENT TO VIOLATE THE STATUTE MUST EXIST TO JUSTIFY A CONVICTION').

• • •

MUCH OF THE REASON FOR INSISTING ON *MENS REA* IS TO PREVENT 'OSTENSIBLY INNOCUOUS CONDUCT' FROM UNWITTINGLY BECOMING CRIMINAL.

• • •

It will be observed that Licciardi was far from innocent morally or in terms of the law of California. But the question is whether he was innocent of any design to commit a federal crime. On this point evidence was required.

• • •

> But the Supreme Court held that a conspiracy criminalized by § 371 is ' most importantly' defined by the '*target* of the conspiracy'.
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> • • •
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> Under this consistent construction for a century of § 371, the government has failed to prove its case against Licciardi for conspiracy to defraud the United States by impairing the functions of the BATF. That the incidental effects of Licciardi's actions would have been to impair the functions of the BATF does not confer upon him the *mens rea* of accomplishing that object.
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> • • •
>
> Long ago Learned Hand referred to the general conspiracy statute as the 'darling of the modern prosecutor's nursery'. *Harrison v. United States*, 7 F.2d 259, 263 (2d Cir. 1925). It is understandable why that should be so, and it is perhaps understandable but regrettable that prosecutors should recurrently push to expand the limits of the statute in order to have it encompass more and more activities which may be deeply offensive or immoral or contrary to state law but which Congress has not made federal crimes. It is instructive that *Pettibone* in 1893, *Hammerschmidt* in 1924 and *Tanner* in 1989 are all instances where the Supreme Court rebuffed a prosecutor's imaginative and unjustified expansion of the statute. We have only recently had to do the same. *United States v. Caldwell*, 989 F.2d 1056 (9th Cir. 1993)."

We again note that none of Petitioners' overt acts in count 1 were immoral or deceitful. Those overt acts prior to January 27, 1987 were not even unlawful and they were not unlawful after January 27, 1987, absent the requisite unlawful willful intent.

Count 1 of the indictment in the case at bar alleged that Petitioners conspired,

> **"TO DEFRAUD THE UNITED STATES BY IMPEDING, IMPAIRING, OBSTRUCTING AND DEFEATING THE LAWFUL FUNCTIONS OF THE DEPARTMENT OF THE TREASURY, IN PARTICULAR, THE INTERNAL REVENUE SERVICE, IN COLLECTING INFORMATION RELATING TO THE DEFENDANT'S [PETITIONER'S].... ALL OF WHICH INFORMATION IS USEFUL IN CRIMINAL, TAX AND REGULATORY INVESTIGATIONS."**

Count 1 further alleged that the therein 11 named banks were "financial institutions" as defined by 31 USC 5312 (2) and 31 CFR 103.11 (G), and that under 31 USC 5313 (A) and 31 CFR 103.22 (A) (1), the aforesaid 11 named financial institutions were required to file with the Internal Revenue Service a currency transaction report form #4789 for each financial transaction of more than $10,000. It was further alleged in count 1 that the IRS Form #4789 required that the afore-mentioned financial institutions identify and record the name and address of the person conducting the financial transaction, and that reports of current transactions had a high degree of usefulness in criminal, tax and regulatory investigations and proceedings.

Count 1 additionally alleged that it was part of the conspiracy that Petitioners,

> **"IN ORDER TO AVOID THE FILING OF INTERNAL REVENUE SERVICE FORM #4789...STRUCTURED BANK DEPOSITS AND PURCHASES OF REAL ESTATE AND VEHICLES...BY MAKING CASH PAYMENTS IN AMOUNTS LESS THAN $10,000."**

Count 1 also alleged that it was a part of the conspiracy that Petitioners committed a multiplicity of various antistructuring financial transactions, which were also alleged to be overt acts committed by Petitioners in furtherance of the conspiracy. The post January 27, 1987 antistructuring financial transactions-overt acts were also alleged as the substantive antistructuring offenses of counts 2, 3 and 4.

The United States Court of Appeals for the Seventh Circuit in the case at bar, cited its language in United States vs. Cypiran, 23 F. 3d. 1189, 1201 (7th Cir. 1994), Petition for Certiorari filed in this Court, July 1, 1994, No. 94-5007, that,

> **"TO CONVICT [A DEFENDANT] UNDER THE CONSPIRACY TO DEFRAUD CLAUSE OF SECTION 371...THE GOVERNMENT IS REQUIRED TO PROVE ONLY THAT [THE DEFENDANT] AGREED TO INTERFERE WITH OR OBSTRUCT THE UNITED STATES' ABILITY TO COLLECT TAXES BY DEFRAUDING THE IRS.",**

and that,

> **"IF MR. MASON'S [PETITIONERS'] ACTIONS CONSTITUTED A CONSPIRACY TO IMPAIR THE FUNCTIONING OF THE IRS, NO OTHER FORM OF INJURY TO THE FEDERAL GOVERNMENT NEED BE ESTABLISHED FOR THE CONSPIRACY TO FALL UNDER SECTION 371. TANNER VS. U.S., 483 US 107 (1987)."**

The decision of United States Court of Appeals for the Seventh Circuit in the instant case, is in conflict with and is diametrically opposite the aforesaid decisions of the United States Court of Appeals for the Ninth Circuit in LICCIARDI on the same matter, and CALDWELL and the decisions of This Court in TANNER and HAMMERSCHMIDT.

The Petition for Certiorari, it is respectfully submitted, should therefore be granted and the decisions of the Court of Appeals for the Seventh Circuit in the instant cause and Petitioners' convictions should be reversed.

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APPENDIX

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In the

United States Court of Appeals

For the Seventh Circuit

Nos. 92-2848 & 92-4031

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CASSANDRA L. JACKSON
and WILLIE MASON,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 91 CR 859—Harry D. Leinenweber, *Judge.*

ARGUED JUNE 8, 1994—DECIDED SEPTEMBER 6, 1994

Before ALARCON,* RIPPLE and MANION, *Circuit Judges.*

RIPPLE, *Circuit Judge.* Cassandra Jackson and Willie Mason were convicted on two and three counts, respectively, of structuring currency transactions in violation of 31 U.S.C. §§ 5324(3) and 5322(a). The Supreme Court's decision in *Ratzlaf v. United States*, 114 S. Ct. 655 (1994), handed down well after the defendants' trial, requires that we reverse those convictions. Each defendant was also convicted, however, on one count of conspiracy to defraud

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* The Honorable Arthur L. Alarcon, of the United States Court of Appeals for the Ninth Circuit, is sitting by designation.

the United States by impeding the lawful functions of the Internal Revenue Service (IRS) in violation of 18 U.S.C. § 371. For the reasons that follow, we affirm the § 371 conspiracy convictions.

I

BACKGROUND

At trial, the government attempted to demonstrate that the defendants illegally structured their financial transactions (i.e., broke up a transaction above the $10,000 reporting threshold into multiple transactions, *see* 31 U.S.C. § 5313(a); 31 C.F.R. § 103.22), and that they conspired to defraud the United States by impeding the lawful functions of the IRS. A great deal of the evidence, however, tended to demonstrate both allegations. Thus, although we reverse the antistructuring convictions under 31 U.S.C. §§ 5324(3) and 5322(a), we set forth in detail the structuring activity of the defendants—as well as other evidence—that demonstrates a conspiracy to defraud the United States under § 371.

The evidence the government presented consists of several groups of currency transactions executed by or at the behest of the defendants. The first group of transactions took place on April 22, 1986, the sale date of a house the defendants arranged to purchase in the name of Willie Mason's mother, Mary Sawyer. On that day, Ms. Jackson purchased seven cashier's checks at two different banks totalling $18,000, not one of which exceeded $5,000. These checks, along with $4,274.31 in cash, were tendered to pay the house's purchase price of $22,274.31. The second group of transactions concerned five separate deposits Mr. Mason had his aunt, Marie Bradley, make for him at three different banks in Alabama in the summer of 1986. These deposits, which according to testimony consisted in part of money Mr. Mason inherited from his father, totalled $22,000. No individual deposit exceeded $7,000, and three were made on the same day, June 3,

1986. All but one of the deposits were made into a separate account bearing Marie Bradley's name. Mr. Mason also gave Bradley $10,000 cash before he left Alabama. On July 6, 1987, Mr. Mason had his aunt withdraw for him most of the money from the accounts.

Another group of transactions stemmed from Mr. Mason's automobile purchases. In 1986, Mr. Mason purchased a 1986 Mercedes 560 SEL sedan. He made the initial payment on the car with four cashier's checks, each of which was for $9,000. Mr. Mason tendered the remainder of the slightly less than $60,000 purchase price with money orders and cash within a few days of the purchase. Shortly thereafter, in June 1986, Mr. Mason purchased a 1986 Chevrolet Corvette. Again he paid for the car in cash and money orders. He placed the title for the car in the name of Lula Triplett, Ms. Jackson's aunt, and did so without ever notifying Triplett. In October 1986, Mr. Mason purchased a 1987 Cadillac Fleetwood, and this time placed the title in Ms. Jackson's name. Once again, the car was paid for in checks and cash below $10,000. In the summer of 1987, Mr. Mason purchased another new Mercedes 560 SEL, which he placed in the name of one Sherman Sawyer; he later had the car made into a convertible. Finally, in 1988, Mr. Mason purchased two more expensive cars. Upon acquiring the first, a 1988 BMW convertible, Mr. Mason once again put the title in Lula Triplett's name. In the case of the second, a 1985 Jaguar XJS, he put the title in the name of Darryl Redmon. The Jaguar was purchased with three $9,000 cashier's checks; Mr. Mason was the remitter on two.

The next group of transactions concerns the defendants' purchase of another home in the fall of 1987. Ms. Jackson reviewed the real estate contract and signed the documents as the purchaser of record. On October 3, 1987, Ms. Jackson delivered the earnest money, $10,200; she brought it in the form of two checks, each of which was under $10,000, from two different banks. For the closing, which occurred on November 6, 1987, the defendants assembled over the course of several weeks sixteen cashier's

checks totalling approximately $90,000, all of which were under $10,000. Many of these checks were purchased by persons other than the defendants, but, at the defendants' request, and always immediately after the defendants had visited their safety deposit box. For instance, on October 3, 1987, Michael Moretti, an acquaintance of Mr. Mason's, was approached by Mason outside of a bank. Mr. Mason asked Moretti to purchase a cashier's check for $5,200 and to list Ms. Jackson as the payee; Moretti did so. This was not the only time the defendants requested the help of Moretti, or of others, in obtaining cashier's checks. On October 29, Triplett, Ms. Jackson, and Moretti—using the name of Mike Martin—each purchased several checks totalling $30,000; not one check individually exceeded $9,000. Again, on November 2, Ms. Jackson and two acquaintances, Willie Sawyer and Laurie Hopewell, each purchased checks, the sum of which totalled $19,000 and the largest of which was $9,000. Two of these cashier's checks were, in fact, sequentially ordered, suggesting that they were purchased close in time from the same teller. These checks, and others procured in similar fashion but not worth further detail here, were brought to the house closing. Ms. Jackson, as purchaser, signed all the relevant documents; but on those documents the purchaser was listed as American National Bank of Chicago, Trustee.

By the end of the spending spree, the defendants had spent over $300,000. At trial, the government offered evidence showing that, in the same time period, Social Security Administration records showed no wages for either defendant, as well as no reported income from self-employment. Moreover, the government presented evidence showing that neither defendant had filed a tax return with the IRS in any year between 1984 and 1990. The defendants offered no evidence in their behalf. Ms. Jackson and Mr. Mason were convicted on two and three counts, respectively, of structuring currency transactions in violation of 31 U.S.C. §§ 5324(3) and 5322(a). They were also convicted, under the first count of the indictment, of conspiring to defraud the United States in violation of 18 U.S.C. § 371. Specifically, they were convicted of conspiracy

> to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury, in particular, the Internal Revenue Service, in collecting information relating to the defendants' access to large amounts of cash, to defendants' cash transactions in excess of $10,000, and to defendants' expenditures of large amounts of cash on identifiable assets, all of which information is useful in criminal, tax and regulatory investigations.

R.34 at 1 (superseding indictment). Ms. Jackson was sentenced to twenty-five months' incarceration on each of the three counts on which she was convicted, to run concurrently. Mr. Mason was sentenced to thirty-seven months' incarceration on each of the four counts on which he was convicted, also to run concurrently but consecutive to a state court sentence.

II

DISCUSSION

On appeal, the defendants contend—and the government concedes—that *Ratzlaf v. United States*, 114 S. Ct. 655 (1994), requires that we reverse the convictions for violations of the antistructuring statutes. We agree. In *Ratzlaf*, the Supreme Court held that the "willfully violating" language in 31 U.S.C. § 5322(a) means that "the government must prove that the defendant acted with knowledge that his conduct was unlawful." *Ratzlaf*, 114 S. Ct. at 657. In this case, the district court, in accordance with the law applicable in this circuit at the time, expressly instructed the jury that it was not required to find that they knew the currency structuring in which they engaged was unlawful. We must therefore reverse the convictions in counts two, three, and four of the indictment for violations of 31 U.S.C. §§ 5324(3) and 5322(a). *See United States v. Jones*, 21 F.3d 165, 172-73 (7th Cir. 1994) (reversing and remanding structuring conviction in light of *Ratzlaf*).

The defendants also submit, however, that we must reverse their convictions on count one of the indictment for conspiring to defraud the United States in violation of 18 U.S.C. § 371. We now take up each defendant's arguments in support of reversal on this latter count.

A. *Willie Mason*

1.

Mr. Mason submits that, because the defendants' § 371 conspiracy convictions were dependent on violations of the antistructuring laws, *Ratzlaf* requires that we reverse the conspiracy convictions. He also argues that, because the conspiracy convictions were based in part on structuring conduct that took place before Congress made structuring currency transactions illegal, the Ex Post Facto Clause of the Constitution of the United States requires that we reverse the defendants' conspiracy convictions. Mr. Mason's argument, therefore, would appear to be two-fold. It is, however, an argument actually based on a single premise—that the defendants' convictions for conspiring to defraud the United States were necessarily predicated on violations of the antistructuring laws. Mr. Mason thus asserts that the conspiracy convictions should rise or fall with the structuring convictions.

In response, the government argues that a § 371 conspiracy to defraud the United States is an independent violation that need not be based on the violation of another substantive statute. The government points out that count one of the indictment in this case, which sets forth the § 371 charge, never mentions a structuring violation or the relevant antistructuring statutes. Count one charges a conspiracy "to defraud the United States"; it does not allege a conspiracy "to commit any offense against the United States." 18 U.S.C. § 371. The government argues that § 371 proscribes both sorts of conspiracies, but does so in the disjunctive, thereby obviating the need to demonstrate the violation of a separate substantive offense in a § 371 conviction for conspiracy to defraud the United

States. A violation of a separate substantive statute, the government contends, *may* provide the overt act evidencing the conspiracy to defraud, but the presence of such a violation is not the *sine qua non* of a § 371 conspiracy.

The government submits that the foregoing principles reveal the lack of merit in both of Mr. Mason's claims. First, the government argues that *Ratzlaf* does not require reversal of the § 371 conspiracy. *Ratzlaf*, it maintains, concerned the interpretation of the term "willfully" in § 5322(a), a statute not implicated in the defendants' § 371 conspiracy conviction—either in the indictment setting forth the § 371 charge or in the jury instructions on the elements of a § 371 offense. The government therefore contends that it was not required to demonstrate knowledge of illegality, as *Ratzlaf* requires in convictions under the antistructuring laws. Rather, the government states that it needed to prove only the elements of a § 371 offense. Second, the government submits that, in regard to Mr. Mason's ex post facto argument, the date of enactment of the antistructuring laws has nothing to do with a § 371 conspiracy. The defendants, the government reiterates, were convicted in count one of the indictment of conspiracy to defraud the United States, not of conspiracy to violate the antistructuring laws. The government thus contends that the only relevant date of enactment for ex post facto purposes is that of § 371, which was enacted long before the events at issue in this case transpired.

We believe that the government's position is the correct one. In relevant part, 18 U.S.C. § 371 reads:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

As the language of the statute indicates, there are two different conspiracies with which a defendant can be charged under § 371—a conspiracy "to commit any offense against the United States," *or* a conspiracy "to defraud the United States." *See United States v. Bucey*, 876 F.2d 1297, 1311 (7th Cir.) (setting forth the "two prongs" of § 371), *cert. denied*, 493 U.S. 1004 (1989). A conviction under § 371, therefore, does not *require* that the government prove a violation of a separate substantive statute. *Id.* at 1312; *accord United States v. Caldwell*, 989 F.2d 1056, 1059 (9th Cir. 1993) (stating that under § 371 "[n]either the conspiracy's goal nor the means used to achieve it need to be independently illegal"); *United States v. Rosengarten*, 857 F.2d 76, 78 (2d Cir. 1988) (stating that "section 371's ban on conspiracies to defraud need not involve the violation of a separate statute"), *cert. denied*, 488 U.S. 1011 (1989). As the Supreme Court stated in discussing the predecessor to § 371, the government *may* allege the violation of specific statute to demonstrate a conspiracy to defraud the United States; but such an allegation is only "a way of consummating the conspiracy . . . which, like the use of a gun to effect a conspiracy to murder, is purely ancillary to the substantive offense." *Glasser v. United States*, 315 U.S. 60, 67 (1942).[1]

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[1] *See also Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924) ("To conspire to defraud the United States means primarily to cheat the Government out of property or money, but it also means to interfere with or obstruct one of its lawful government functions by deceit, craft or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane or the overreaching of those charged with carrying out the governmental intention."); *Haas v. Henkel*, 216 U.S. 462, 479 (1910) ("The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government.").

We thus cannot accept either of Mr. Mason's contentions. His first contention—that *Ratzlaf* requires reversal of the § 371 convictions—is misplaced because the government did not have to demonstrate that the defendants violated the antistructuring laws. *Ratzlaf*'s holding concerning the meaning of "willfully violating" in the antistructuring laws, therefore, has no bearing on the defendants' § 371 convictions; § 371 contains no such language. We recently rejected a similar argument in *United States v. Cyprian*, 23 F.3d 1189, 1201 (7th Cir. 1994), *petition for cert. filed*, (U.S. July 1, 1994) (No. 94-5007). The defendant in *Cyprian* also had been convicted of conspiring to defraud the United States by impeding the lawful functions of the IRS in violation of § 371. He contended that his conviction could not stand because the evidence failed to show that he "willfully" violated any federal tax laws the way that term had been interpreted by the Supreme Court.[2] In rejecting his argument, we noted that it was the tax statutes that contained the term "willfully," not § 371. We made clear that "this circuit's interpretation of § 371 liability has never indicated that subjective intent to commit a [separate] crime is a required element under this provision." *Cyprian*, 23 F.3d at 1201. We stated that

> to convict [a defendant] under the conspiracy to defraud clause of § 371, the government d[oes] not need to charge or prove that [the defendant] agreed (or had the intent) to commit a substantive . . . offense. Rather, the government [i]s required to prove only that [the defendant] agreed to interfere with or obstruct the United States' ability to collect taxes by defrauding the IRS.

Id.; *see also United States v. Brown*, No. 93-1762, 1994 WL 398217 at *10 n.5 (7th Cir. Aug. 1, 1994) (distinguishing *Ratzlaf* because § 371 does not require willfulness);

[2] *See United States v. Bishop*, 412 U.S. 346, 360 (1973) (stating that "the word 'willfully' in [tax] statutes generally connotes a voluntary, intentional violation of a known legal duty").

United States v. Goulding, 26 F.3d 656, 663 (7th Cir. 1994) (rejecting defendants' argument "that they could be convicted under 18 U.S.C. § 371 only if they violated a specific tax provision").

Our decision in *Bucey* is also instructive. In that case, the defendant argued that his § 371 conviction for conspiring to defraud the United States had to be reversed because "the only conspiracy proven was a conspiracy to conceal the source of currency, which, he submits, is not criminal." *Bucey*, 876 F.2d at 1312. At the time of the defendant's activities in *Bucey*, Congress had not yet even made it illegal for an individual to structure currency transactions. *Id.* at 1313 n.30. We nonetheless affirmed the § 371 conviction. In doing so, we emphasized that under § 371 "the government need not charge or prove that [the defendant] agreed to commit, or actually did commit a substantive offense": " '[A]cts which are in themselves legal lose their legal character when they become constituent elements of an unlawful scheme.' " *Id.* at 1312 (quoting *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 707 (1962)). We therefore concluded that the "overall scheme to circumvent the currency reporting laws and to prevent the IRS from collecting accurate data, reports and income taxes supports a conspiracy conviction regardless of the absence of substantive currency law violations." *Id.* at 1313; *see also United States v. Jones*, 938 F.2d 737, 742 (7th Cir. 1991) (relying on *Bucey* in affirming § 371 conviction under the defraud clause).

Mr. Mason's second contention—that his § 371 conviction violates the ex post facto clause—fails for the same reason as the first contention: His § 371 conviction was not based on the antistructuring laws. Thus, whether there was structuring activity alleged in the indictment and proved at trial that took place before the enactment of the antistructuring laws is irrelevant for ex post facto purposes. The conviction was not based on the antistructuring laws, but rather on § 371 itself, and the structuring activity presented at trial served to demonstrate the existence of a

§ 371 conspiracy as much as it did any violation of the antistructuring laws.

In *United States v. Rosengarten*, 857 F.2d 76 (2d Cir. 1988), *cert. denied*, 488 U.S. 1011 (1989), the Second Circuit rejected a similar ex post facto argument. The defendant in that case was also indicted for conspiring to defraud the United States by impeding the lawful function of the IRS. The acts underlying the indictment, however, concerned the backdating of real estate documents to take advantage of certain provisions in the Tax Reform Act of 1986. Because the defendant's backdating took place between the Act's October 22, 1986 enactment date and the Act's January 1, 1987 effective date, the district court dismissed the § 371 charge as violative of the ex post facto clause. The Second Circuit reversed. After noting the general proposition that "section 371's ban on conspiracies to defraud need not involve the violation of a separate statute," *id.* at 78, the court rejected the defendant's ex post facto argument:

> Application of the foregoing well-accepted principles makes it clear that the effective date of . . . the Tax Reform Act was not determinative of whether appellees committed the crime of conspiring to defraud the United States. Appellees were not charged with violating [that Act]. They were charged with a section 371 conspiracy to defraud the Government by impeding and obstructing the functions of the IRS in the ascertainment and collection of income taxes.

Id. at 79. The same reasoning demonstrates that the enactment date of the antistructuring laws is not relevant for purposes of ex post facto analysis in the defendants' case. Rather, the only relevant date of enactment is that of § 371, and the overt acts the government proved at trial evidencing the conspiracy occurred long after that date.

To the extent that Mr. Mason's arguments can be construed as challenging the sufficiency of the evidence, we conclude that the government has proved the elements

of a conspiracy to defraud the United States under § 371. Those elements are:

> (1) an agreement to accomplish an illegal objective against the United States; (2) one or more overt acts in furtherance of the illegal purpose; and (3) the intent to commit the substantive offense, i.e., to defraud the United States.

Cyprian, 23 F.3d at 1201; *see also United States v. Marren*, 890 F.2d 924, 933 (7th Cir. 1989); *United States v. Gaddis*, 877 F.2d 605, 608 (7th Cir. 1989); *United States v. Hooks*, 848 F.2d 785, 792 (7th Cir. 1988). The government must show that the defendant " 'agreed to interfere with or obstruct one of [the government's] lawful functions by deceit, craft or trickery, or at least by means that are dishonest.' " *Bucey*, 876 F.2d at 1312 (quoting *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924)).[3] "[I]f [Mr. Mason's] actions constituted a conspiracy to impair the functioning of [the IRS], no other form of injury to the Federal Government need be established for

[3] We recently held that a court's failure to define "defraud" under § 371 in accordance with the "deceit" language employed in *Hammerschmidt* did not constitute plain error. *See United States v. Knapp*, 25 F.3d 451, 455 (7th Cir. 1994) ("Absent any indication in the record that the jury was led to believe that 'defraud' meant anything other than its commonly understood definition, [the defendant] was not denied a substantial right by the district judge's failure to further define the term 'defraud' in this context."). We need not decide whether a district court must provide a jury with such a definition because the district court in this case did so. *See* tr. 626-27 ("Used in these instructions, 'to defraud the United States or any agency thereof' is not limited to cheating the government of property or money, but also means to impede or obstruct one of its lawful governmental functions by deceit or dishonest means."); *cf. United States v. Caldwell*, 989 F.2d 1056, 1060-61 (9th Cir. 1993) (holding that failure to instruct the jury that the obstruction of a lawful government function had to be "by deceitful or dishonest means" required reversal because it constituted failure to instruct on "an essential element of a crime," which cannot be considered harmless).

the conspiracy to fall under § 371." *Tanner v. United States*, 483 U.S. 107, 128 (1987).

Examining the evidence in the light most favorable to the government, we conclude that a rational jury could have found that the government proved the elements of the § 371 offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The evidence at trial showed that Mr. Mason failed to file an income tax return and reported no legal income between 1984 and 1990. Yet in the same time period, Mr. Mason spent more than $300,000. More important, however, he went about making those purchases in a way that a reasonable jury could have found was designed to defraud the government. As the facts detailed in part I, *supra*, demonstrate, Mr. Mason and Ms. Jackson made concerted efforts to conceal their expenditures. For instance, they made many of their purchases in other persons' names. Furthermore, they not only structured currency transactions to avoid the filing of any currency transaction reports, but also had many individuals purchase for them those cashier's checks. The evidence thus showed that Mr. Mason conspired with Ms. Jackson to impede the IRS's attempt to "collect information relating to the defendants' access to large amounts of cash, to defendants' cash transactions in excess of $10,000, and to defendants' expenditures of large amounts of cash on identifiable assets." R.34 at 1 (superseding indictment). *Cf. Bucey*, 876 F.2d at 1313 (stating that the government sufficiently demonstrated that the defendant conspired "to obstruct by deceit, craft or trickery the lawful function of the Treasury in collecting accurate [currency transaction reports]," in "obtaining information concerning the sources and amounts of income," and in "assessing and collecting income taxes").

2.

Mr. Mason's next argument concerns the admissibility of his failure to file an income tax return between 1984 and 1990. He submits that the district court erred in admitting that evidence because it was highly prejudicial and

thus deprived him of a fair trial. Moreover, he contends that the government failed to demonstrate that he owed any taxes in the years he did not file a return. In response, the government argues that the district court's evidentiary ruling on Mr. Mason's failure to file income tax returns was not erroneous, much less an abuse of discretion. The evidence, the government maintains, was admissible for two independent reasons: (1) to complete the story of the crime on trial; and (2) to show motive under Federal Rule of Evidence 404(b).

The district court did not abuse its discretion in admitting evidence concerning Mr. Mason's failure to file income tax returns. Moreover, we need not look to Rule 404(b) to determine the evidence's admissibility because we think the evidence was " 'necessary to complete the story of the crime [on] trial.' " *United States v. Roberts*, 933 F.2d 517, 520 (7th Cir. 1991) (quoting *United States v. Towne*, 870 F.2d 880, 886 (2d Cir.), *cert. denied*, 490 U.S. 1101 (1989)). Such evidence "is not precluded under Rule 404(b) because [it] does not relate to extraneous 'other acts.' " *Id.* Rather, it is evidence that is " 'intricately connected' with the very crime[ ] for which [the defendant] was being tried." *Id.* In this case, testimony concerning Mr. Mason's failure to file income tax returns was necessary to understand and make sense of the activity underlying the conspiracy; the failure to file returns was, in other words, "intricately connected" with a conspiracy to impede and obstruct the IRS. It was not necessary, therefore, to subject its admission to a Rule 404(b) analysis. *See United States v. Muhammad*, 923 F.2d 1461, 1468 (7th Cir. 1991) (holding that admission of evidence showing defendant's participation in shooting incident was not subject to Rule 404(b) analysis because it provided "context" and was "directly relevant" and "intricately related" to the crime charged, possession of a firearm). Moreover, we believe that the district court was within its discretion in determining that the probative value of the evidence outweighed any possible prejudice under Rule 403. *See United States v. Prevatte*, 16 F.3d 767, 778

(7th Cir. 1994) (stating that "a reviewing court should 'accord a trial judge's assessment of the relative probative value and unfair prejudice great deference' ") (quoting *United States v. Koen*, 982 F.2d 1101, 1116 (7th Cir. 1992)).[4]

3.

Mr. Mason's remaining arguments concern his sentence. In this case, however, we reverse three of the four counts on which Mr. Mason was convicted, vacate his sentence, and remand to the district court for resentencing. Because "the effect of a vacation is to nullify the previously imposed sentence," the district court on remand will be writing "on a clean slate." *United States v. Atkinson*, 979 F.2d 1219, 1223 (7th Cir. 1992). As a result, we generally do not address a defendant's additional arguments concerning errors in the sentencing process, *see id.*, and do not think it an efficient use of judicial resources to do so here. Nonetheless, we shall expeditiously dispose of one of Mr. Mason's sentencing arguments—that the district court's application of the Sentencing Guidelines to his case violated the Ex Post Facto Clause. Mr. Mason's basis for this argument is the fact that some of the overt acts alleged in the indictment and proved at trial occurred before the date the Guidelines became effective. Mr. Mason offers no authority for his contention, and for good reason: We rejected the argument long ago. *See United States v. Fazio*, 914 F.2d 950, 959 (7th Cir. 1990) (holding that "the guidelines apply to a defendant whose offense begins before the effective date of the guidelines but continues beyond the effective date of the guidelines"); *see also United States v. Roberts*, 22 F.3d 744, 750 (7th Cir. 1994) ("The Guidelines apply to straddle crimes."). The district

[4] In the alternative, we note in passing that, if this evidence were required to pass muster under the standards that govern Rule 404(b), this submission would clearly meet the test set forth in *United States v. Shackleford*, 738 F.2d 776, 779 (7th Cir. 1984).

court did not err by sentencing Mr. Mason under the Guidelines.

B. *Cassandra Jackson*

1.

In the course of arguing that the evidence against her was insufficient to sustain the conviction, Ms. Jackson also submits that the district court erred in giving an "ostrich instruction" to the jury at the close of the evidence.

On the matter of sufficiency, she asserts that the evidence presented against her showed only that she purchased some cashier's checks, signed some real estate documents, and allowed title to be put in her name on some property—all for Mr. Mason. She thus contends that no reasonable jury could have concluded that she "knowingly" conspired to defraud the United States in violation of § 371. Although this evidence was circumstantial in nature, we believe that it is sufficient to sustain the jury's decision. Moreover, we cannot say that the district court erred in giving an "ostrich instruction." That instruction read:

> When the word "knowingly" is used in these instructions, it means that the defendant realized what he or she was doing and was aware of the nature of his or her conduct, and did not act through ignorance, mistake or accident. Knowledge may be proved by the defendant's conduct, and by all the facts and circumstances surrounding the case. You may infer knowledge from a combination of suspicion and indifference to the truth. If you find that a person had a strong suspicion that things were not what they seemed or that someone had withheld some important facts, yet shut his eyes for fear of what he would learn, you may conclude that he acted knowingly, as I have used that word.

Tr. 626.

We have stated that "an ostrich instruction is appropriate when 'the defendant claims a lack of guilty knowledge

and there are facts and evidence that support an inference of deliberate ignorance.' " *United States v. Bigelow*, 914 F.2d 966, 970 (7th Cir. 1990) (quoting *United States v. Talkington*, 875 F.2d 591, 596 (7th Cir. 1989)), *cert. denied*, 498 U.S. 1121 (1991); *see also United States v. Walker*, 25 F.3d 540, 546 (7th Cir. 1994) (same). We have also specifically sustained the use of the instruction in a conspiracy case. *See United States v. Diaz*, 864 F.2d 544, 549 (7th Cir. 1988), *cert. denied*, 490 U.S. 1070 (1989). Examining the evidence in the light most favorable to the government, *see Bigelow*, 914 F.2d at 970, we believe that the "ostrich instruction" was justified. Ms. Jackson claimed at trial (and, indeed, still claims on appeal) that she lacked guilty knowledge when she participated in the conspiratorial activities. Furthermore, a reasonable person involved in the kinds of activities in which Ms. Jackson was involved—purchasing multiple cashier's checks for expensive purchases made in other persons' names, signing closing documents for houses purchased in other persons' names with multiple cashier's checks obtained by other persons, etc., *see infra* part I—would have "strongly suspect[ed] that [she] was involved in shady dealings." *United States v. Giovannetti*, 919 F.2d 1223, 1228 (7th Cir. 1990). We therefore do not believe the district court erred in instructing the jury that it could infer knowledge—via suspicion and indifference to the truth—from Ms. Jackson's participation in such activity.[5]

---

[5] We need not address at length the other error Ms. Jackson asserts concerning the instructions. She argues, without authority, that the district court erred in giving a "mere presence" instruction that failed to include the "beyond a reasonable doubt" standard. We do not agree. First, the instruction the district court gave was identical to the one we approved in *United States v. Simone*, 931 F.2d 1186, 1192 (7th Cir.), *cert. denied*, 112 S. Ct. 584 (1991). Second, we review instructions not "in lonely isolation, but rather in the context of the trial as an integrated whole." *Bigelow*, 914 F.2d at 970. In light of that principle, we note that the district court recited the "beyond a reasonable doubt" standard six times in the three pages of instructions that precede the "mere presence" instruction, and those instructions also dealt with proof of the conspiracy. *See* tr. 623-26.

2.

Ms. Jackson also argues that her trial counsel's performance deprived her of her Sixth Amendment right to effective assistance of counsel. She contends that her trial counsel fell "well below" the objective standard of reasonableness for two reasons. First, she claims that her trial counsel failed to call several witnesses who were willing to testify to her drug addiction. She states that, if her counsel had done so, the jury could have inferred from their testimony that she was incapable of forming the requisite intent to commit the conspiracy. Second, she contends that her trial counsel's failure to move for severance under Federal Rule of Criminal Procedure 14 also deprived her of effective assistance of counsel. If her counsel had done so, she contends that the district court would likely have granted the motion due to the "gross disparity" of evidence that existed against herself and Mr. Mason.

With respect to the failure to call certain witnesses, we do not know the substance of the testimony those alleged witnesses would have given if Ms. Jackson's trial counsel had called them. The record on this issue, therefore, is not sufficiently developed to consider adequately her ineffective assistance claim on this ground. Because "an examination of the record does not provide clear evidence of the ineffective assistance of counsel," we do not believe that the "problem is ripe for adjudication on the appellate level." *United States v. Lang*, 644 F.2d 1232, 1240 (7th Cir.), *cert. denied*, 454 U.S. 870 (1981). "That is precisely why, as a general rule, we 'prefer[ ] not to consider ineffective assistance of trial counsel claims raised for the first time on appeal.' " *United States v. Ellis*, 23 F.3d 1268, 1274 (7th Cir. 1994) (quoting *United States v. Badger*, 983 F.2d 1443, 1458 (7th Cir.), *cert. denied*, 113 S. Ct. 2391 (1993)). We therefore decline to entertain Ms. Jackson's ineffective assistance argument in this direct appeal. She may raise the matter in a petition for collateral relief under 28 U.S.C. § 2255 if she so desires.

The claim that her counsel's failure to make a severance motion under Rule 14 constituted ineffective assistance

does not present the same barriers to adjudication at this juncture. We do not believe, however, that Ms. Jackson can meet either prong of the test set forth by the Supreme Court of the United States in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Given the presumption that counsel was competent, we cannot say that the failure to seek severance was not a tactical decision on the part of counsel. Indeed, an examination of defense counsel's closing argument makes clear that he argued that his client was the innocent dupe of Mr. Mason. *See* tr. 591-607. In any event, we think that it is highly unlikely that a motion for severance would have been granted. The district court would have been required to balance the risk of guilt by association that Ms. Jackson might incur against the benefit to the judicial system from a joint trial. *See United States v. Bond*, 847 F.2d 1233, 1240 (7th Cir. 1988). As we pointed out in *United States v. Buljubasic*, 808 F.2d 1260, 1263 (7th Cir.), *cert. denied*, 484 U.S. 815 (1987), the benefits to the judicial system from a joint trial are substantial. *See also Zafiro v. United States*, 113 S. Ct. 933, 937 (1993). Ms. Jackson gives us no reason to conclude that those factors would not have predominated over the possibility of prejudice to her, a possibility present in any joint trial. Finally, we note that the district court admonished the jury that it had the obligation to give separate consideration to each defendant.

Conclusion

For the foregoing reasons, we affirm the defendants' convictions on count one of the indictment, conspiracy to defraud the United States under 18 U.S.C. § 371. We reverse Mr. Mason's convictions on counts two, three, and four of the indictment, and reverse Ms. Jackson's convictions on counts two and three of the indictment. We therefore vacate the defendants' sentences and remand for proceedings consistent with this opinion.

AFFIRMED in part, REVERSED in part, and REMANDED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

USCA A07XXXC-92-001—Midwest Law Printing Co., Inc., Chicago—9-6-94

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

November 1, 1994

Before

Hon. ARTHUR L. ALCARON, Circuit Judge*

Hon. KENNETH F. RIPPLE, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

UNITED STATES OF AMERICA, Plaintiff-Appellee, Nos. 92-2848 and 92-4031 v. CASSANDRA JACKSON and WILLIE MASON, Defendants-Appellants.	) Appeal from the) United States District) Court for the Northern) District of Illinois,) Eastern Division.)) No. 91 CR 859.)) Harry D. Leinenweber,) Judge.

ORDER

On consideration of the petition for rehearing filed by the defendants-appellants on September 29, 1994, the judges on the panel have voted to deny the petition. Accordingly,

IT IS ORDERED that the petition for rehearing be, and the same is hereby, DENIED.

*The Honorable Arthur L. Alcaron, of the United States Court of Appeals for the Ninth Circuit, is sitting by designation.

APPENDIX INDICTMENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	NO. 91 CR 859
	)	Violations: Title 18,
	)	United States Code,
V.	)	Sections 2 and 371; Title
	)	31, United States Code,
WILLIE MASON and	)	Sections 5324(1), 5324(3)
CASSANDRA JACKSON	)	and 5322(a).
	)	SUPERSEDING

COUNT I

The SPECIAL APRIL 1990 GRAND JURY charges:

1. From in or about April, 1986 and continuing at least until in or about July, 1988, in the Northern District of Illinois, Eastern Division, and elsewhere,

WILLIE MASON and CASSANDRA JACKSON,

Defendants herein, did knowingly agree and conspire together and with others known and unknown to the Grand Jury to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury, in particular, the Internal Revenue Service, in collecting information relating to the defendants' access to large amounts of cash, to defendants' cash transactions in excess of $10,000, and to defendants' expenditures of large amounts of cash on identifiable assets, all of which information is useful in criminal, tax and regulatory investigations.

2. At all times material to this indictment:

(a) St. Paul Federal Bank, First Bank of Oak Park, American National Bank and

Trust Company of Chicago, Avenue Bank and Trust Company of Oak Park, Olympic Federal, Pathway Financial, Sterling Savings and Loan, Chicago-Tokyo Bank, Central Bank of the South, A.M. South Bank, N.A., and citizens Bank of Robertsdale were "financial institutions" as defined by Title 31, United States Code, Section 5312(2) and 31 C.F.R. 103.11(g).

(b) Under Title 31, United States Code, Section 5313(a) and 31 C.F.R. 103.22(a)(1), financial institutions were required to file with the Internal Revenue Service a Currency Transaction Report (Form 4789) for each deposit, withdrawal, and exchange of currency by, through or to such financial institutions, which involved a transaction of more than $10,000 in currency.

(c) IRS Form 4789 required that a financial institution identify and record the name and address of the person conducting the transaction in currency and the individual or entity on whose behalf the transaction was made.

(d) Multiple currency transactions by or on behalf of any person in an aggregate amount exceeding $10,000 were required to be treated as a single transaction and reported on IRS Form 4789 if the financial institution had knowledge that such transactions occurred during the course of any given 24-hour period. 31 C.F.R. 103.22(a)(1).

(e) Reports of currency transactions have a high degree of usefulness in criminal, tax and regulatory investigations and proceedings. 31 C.F.R. 103.21.

3. It was part of the conspiracy that in order to avoid the filing of Internal Revenue Service Form 4789 in connection with cash transactions exceeding $10,000, defendants structured bank deposits and purchases of real estate and vehicles, each totaling more than $10,000, by making cash payments in amounts less than $10,000.

4. It was further part of the conspiracy that in order to conceal their activities and to avoid the entry of truthful information on Internal Revenue Service Form 4789 in connection with cash transactions exceeding $10,000, defendants provided false information to financial institutions and businesses.

5. It was further part of the conspiracy that in order to disguise the true ownership of certain assets and the association of defendants with the cash transactions, Defendants, WILLIE MASON and CASSANDRA JACKSON, caused bank

accounts, vehicles and real estate to be placed in the names of individual(s) other than the true owner(s).

6. It was further part of the conspiracy that beginning in or about April, 1986, Defendants, WILLIE MASON and CASSANDRA JACKSON, arranged to purchase real estate located at 5247 W. North Avenue in Chicago, Illinois for approximately $22,274.

7. It was further part of the conspiracy that on or about April 22, 1986, Defendants, WILLIE MASON and CASSANDRA JACKSON, purchased and caused to be purchased with cash, seven cashier's checks totaling $18,000 at two different banks. The defendants then used these checks to purchase the real estate at 5247 W. North Avenue.

8. It was further part of the conspiracy that on or about June 3, 1986, Defendant, WILLIE MASON, caused to be deposited $11,500 in cash into three different bank accounts in Alabama.

9. It was further part of the conspiracy that in or about July, 1986, Defendant, WILLIE MASON, purchased a 1986 Corvette automobile and arranged for the title to be placed in the name of another person.

10. It was further part of the conspiracy that in or about October, 1987, Defendants, WILLIE MASON and CASSANDRA JACKSON, arranged to purchase real estate located at 342 Forest, Hillside, Illinois for approximately $102,000.

11. It was further part of the conspiracy that on or about October 3, 1987, Defendants, WILLIE MASON and CASSANDRA JACKSON, purchased and caused to be purchased with cash, two cashier's checks totaling $10,200 at two different

banks for use as a down payment on the purchase price for 342 Forest.

12. It was further part of the conspiracy that in or about late October and early November, 1987, Defendants, WILLIE MASON and CASSANDRA JACKSON, purchased and caused to be purchased with cash, approximately 14 additional cashier's checks and one personal money order totaling approximately $90,671 at eight different banks. The defendants then used these checks to purchase the real estate at 342 Forest.

13. It was further part of the conspiracy that in or about March, 1988, Defendant, WILLIE MASON, purchased a 1988 BMW by trading in the 1986 Corvette and arranged for the title to the BMW to be put in another person's name.

14. It was further part of the conspiracy that in or about July, 1988 Defendant, WILLIE MASON, purchased a 1985 Jaguar in High Springs, Florida for $27,000, paid in part with cashier's checks in amounts under $10,000, and arranged for the title to the Jaguar to be put in another person's name.

15. It was further part of the conspiracy that the defendants would and did misrepresent, conceal and hide and cause to be misrepresented, concealed and hidden, the purposes of the acts done in furtherance of the conspiracy.

OVERT ACTS

16. In furtherance of the conspiracy and to effect the objects thereof, the defendants committed or caused to be committed the following overt acts:

a. On or about April 22, 1986, Defendants, WILLIE MASON and CASSANDRA JACKSON, purchased and

caused to be purchased five cashier's checks, numbers 181 through 185, from American National Bank and Trust Company of Chicago with $9,000 cash.

b. On or about April 22, 1986, Defendants, WILLIE MASON and CASSANDRA JACKSON purchased and caused to be purchased two cashier's checks, numbers 89425 and 89426, from Avenue Bank and Trust Company of Oak Park with $9,000 cash.

c. On or about June 3, 1986, Defendant, WILLIE MASON, caused to be deposited $5,000 in cash into savings account number 470 4528 2, held in his own name and in the name of another person, at Central Bank of the South in Fairhope, Alabama.

d. On or about June 3, 1986, Defendant, WILLIE MASON, caused to be deposited $4,000 in cash into checking account number 023 1937 9, held in the name of another person, at Central Bank of the South in Fairhope, Alabama.

e. On or about June 3, 1986, Defendant, WILLIE MASON, caused to be deposited $2,500 in cash into account number 121 25386026, held in his own name and the name of another person, at AM South Bank N.A. in Baldwin County, Alabama.

f. In or about July, 1986, Defendant, WILLIE MASON, purchased a 1986 Corvette automobile and arranged for the title to be put in another person's name.

g. On or about October 3, 1987, Defendants, WILLIE MASON and CASSANDRA JACKSON, purchased and caused to be purchased cashier's check number 70-998626-6

from St. Paul Federal Bank with $5,000 cash and cashier's check number R271166 from First Bank of Oak Park with $5,200 cash.

h. On or about October 29, 1987, Defendants, WILLIE MASON and CASSANDRA JACKSON, purchased and caused to be purchased cashier's check number R272688 from First Bank of Oak Park with $9,000 cash; cashier's check number 07-6973 from Olympic Federal with $3,000 cash; cashier's check number 70-1002847-0 from St. Paul Federal Bank with $9,000 cash; and cashier's check number 69-022114 from Pathway Financial with $9,000 cash.

i. On or about November 2, 1987, Defendants, WILLIE MASON and CASSANDRA JACKSON, purchased and caused to be purchased cashier's check number 69-022138 from Pathway Financial with $9,000 cash; cashier's check number A 41258 from Citizens Bank with $5,000 cash; and cashier's check number A 41259 from Citizens Bank with $5,000 cash.

j. On or about November 3, 1987, Defendants, WILLIE MASON and CASSANDRA JACKSON, purchased and caused to be purchased cashier's check number A 41301 from Citizens Bank with $5,000 cash; cashier's check number 101832 from Avenue Bank of Oak Park with $5,000 cash; cashier's check number 07-6994 from Olympic Federal with $9,000 cash; cashier's check number R272777 from First Bank of Oak Park with $9,000 cash; cashier's check number R273561 from First Bank of Oak Park with $5,000 cash; cashier's check number R273562 from First Bank of Oak Park with $5,000 cash; and personal money order number 2884196 from Sterling Savings and Loan with $2,000 cash.

k. On or about November 6, 1987, Defendants, WILLIE MASON and CASSANDRA JACKSON, purchased and caused to be purchased cashier's check number C147724 from Chicago-Tokyo Bank with $1, 671.67 cash.

l. In or about November 1987, Defendants, WILLIE MASON and CASSANDRA JACKSON, caused the property at 342 Forest to be placed in trust in the name of another person.

m. In or about March, 1988, Defendant, WILLIE MASON, purchased a 1988 BMW by trading in the 1986 Corvette, and arranged for the title to the BMW to be put in another person's name.

In violation of Title 18, United States Code, Section 371.

COUNT TWO

The SPECIAL APRIL 1990 GRAND JURY further charges:

1. At the times material to this indictment:

(a) Paragraph 2 of Count One is realleged as if fully set forth here.

2. On or about October 3, 1987, in the Northern District of Illinois, Eastern Division,

WILLIE MASON and CASSANDRA JACKSON,

Defendants herein, knowingly and intentionally, for the purpose of evading the filing with the Internal Revenue Service of a Currency Transaction Report (IRS Form 4789), as required by Title 31, United States Code, Section 5313(a), structured and assisted in structuring, and attempted to structure and assist in the structuring of transactions with domestic financial institutions, namely, by purchasing and causing the purchase of, with $10,200 in United States currency, two cashier's checks at the following domestic financial institutions in the following amounts on or about the date cited:

Financial Institution	Date	Amount
St. Paul Federal Bank	10/3/87	$5,000; and
First Bank of Oak Park	10/3/87	$5,200;

In violation of Title 31, United States Code, Sections 5324(3) and 5322(a) and Title 18, United States Code, Section 2.

COUNT THREE

The SPECIAL APRIL 1990 GRAND JURY further charges:

1. At the times material to this indictment:

(a) Paragraph 2 of Count One is realleged as if fully set forth here.

2. From on or about October 29, 1987 to on or about November 6, 1987, in the Northern District of Illinois, Eastern Division,

WILLIE MASON and CASSANDRA JACKSON,

Defendants herein, knowingly and intentionally, for the purpose of evading the filing with the Internal Revenue Service of a Currency Transaction Report (IRS Form 4789), as required by Title 31, United States Code, Section 5313(a), structured and assisted in structuring, and attempted to structure and assist in the structuring of transactions with domestic financial institutions, namely, by purchasing and causing the purchase of, with $90,671.67 in United States currency, fourteen (14) cashier's checks and one personal money order at the following domestic financial institutions in the following amounts on or about the dates cited:

Financial Institution	**Date**	**Amount**
First Bank of Oak Park	10/29/87	$9,000;
Olympic Federal	10/29/87	$3,000;
St. Paul Federal Bank	10/29/87	$9,000;
Pathway Financial	10/29/87	$9,000;
Pathway Financial	11/2/87	$9,000;
Citizens Bank	11/2/87	$5,000;
Citizens Bank	11/2/87	$5,000;

Citizens Bank	11/3/87	$5,000;
Avenue Bank of Oak Park	11/3/87	$5,000;
Olympic Federal	11/3/87	$9,000;
First Bank of Oak Park	11/3/87	$9,000;
First Bank of Oak Park	11/3/87	$5,000;
First Bank of Oak Park	11/3/87	$5,000;
Sterling Savings & Loan	11/3/87	$2,000; and
Chicago-Tokyo Bank	11/6/87	$1,671.67;

In violation of Title 31, United States Code, Sections 5324(3) and 5322(a) and Title 18, United States Code, Section 2.

COUNT FOUR

The SPECIAL APRIL 1990 GRAND JURY further charges:

1. At the times material to this indictment:

   (a) Paragraph 2 of Count One is realleged as if fully set forth here.

2. On or about November 3, 1987, in the Northern District of Illinois, Eastern Division,

WILLIE MASON and CASSANDRA JACKSON,

Defendants herein, knowingly and intentionally, for the purpose of evading the filing with the Internal Revenue Service of a Currency Transaction Report (IRS Form 4789), as required by Title 31, United States Code, Section 5313(a), caused and attempted to cause a domestic financial institution, namely, First Bank of Oak Park, to fail to file a Currency Transaction Report (IRS Form 4789) by purchasing and causing the purchase with $19,000 in United States currency, three (3) cashier's checks described as follows:

Cashier's Check No.	Amount
R 272777	$9,000;
R 273561	$5,000; and
R 273562	$5,000;

In violation of Title 31, United States Code, Sections 5324(1) and 5322(a), and Title 18, United States Code, Section 2.

A TRUE BILL:

_____

FOREPERSON

_____

UNITED STATES ATTORNEY